

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for La Jolla  
Bank, FSB,

Plaintiff,

v.

PATRICK O'CONNOR & ASSOCIATES,

Defendant.

Case No. 10cv1520-BTM (JMA)

**ORDER RE EX PARTE  
APPLICATION**

The ex parte application of FDIC, as receiver for La Jolla Bank, FSB, for an order setting aside a previous substitution of OneWest Bank, FSB as plaintiff in this action is **GRANTED**. Plaintiff submits a declaration from a senior counsel at OneWest Bank, FSB stating that La Jolla Bank, FSB's claim against Defendant was not assigned to OneWest Bank. (Schwappach Decl. ¶ 6) The Court is now satisfied that the FDIC's claim against Defendant remains subject to the control of the FDIC and was not transferred to OneWest Bank. Therefore, the Court sets aside the Texas state court order substituting OneWest Bank as party plaintiff. The FDIC, in its capacity as receiver for La Jolla Bank, FSB, is the proper plaintiff in this action.

Defendant, in response to this application, asks the Court to reconsider its denial of Defendant's motion to remand. As explained in the Court's prior order, the state court order of substitution applied only to the "Party Plaintiff" in the Texas action. Because Defendant

1 had filed counterclaims prior to the entry of the state court order of substitution, the FDIC  
2 remained a counter-defendant in the state action.

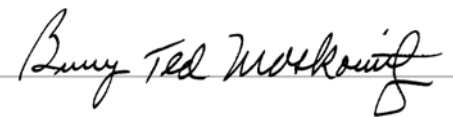
3 Defendant's citation to Texas rules of civil procedure governing joinder does not alter  
4 this conclusion. Under the plain text of the state court order of substitution, the FDIC  
5 remained a party to the state action, conferring this Court with subject matter jurisdiction  
6 pursuant to 12 U.S.C. § 1441a(l)(1) and 12 U.S.C. § 1819(b)(2)(A). Defendant's request is  
7 **DENIED.**

8 Finally, Defendant states that should the Court grant Plaintiff's application, "O'Connor  
9 requests that the Court clarify the substitution of parties so as to specifically designate that  
10 the FDIC is the party Plaintiff in the capacity as receiver for La Jolla Bank, FSB, as to all  
11 claims raised by the pleadings in the case, inclusive of the counterclaims raised herein by  
12 O'Connor."

13 As explained in the order denying remand and as discussed above, the FDIC, in its  
14 capacity as receiver, is a party to Defendant's counterclaims. This is because "as receiver  
15 the FDIC steps into the shoes of the failed financial institution, assuming all the rights and  
16 obligations of the defunct bank." *Sharpe v. FDIC*, 126 F.3d 1147, 1152 (9th Cir. 1997). No  
17 clarification on this point should be needed, but to be abundantly clear, the FDIC, in its  
18 capacity as receiver for La Jolla Bank, FSB, is the counter-defendant in this action.

19  
20 **IT IS SO ORDERED.**

21  
22 DATED: June 3, 2011

23   
24 Honorable Barry Ted Moskowitz  
25 United States District Judge  
26  
27  
28